IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1144 OF 2005

Sadashiv Anandrao Nikam & ors. ... Appellants

V/s

The General Manager,
Bank of Maharashtra & ors. ... Respondents

Mr. L.S. Gaikwad for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 5TH OCT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Satara dated 28.2.2005 whereby the Trial Court's order was modified to the extent of order regarding mesne profits.

2. Heard learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit against the defendants - Bank for possession of the suit property and regarding

mesne profits. Decree was passed for possession as well as mesne profits and the Trial Court directed that enquiry about the rent at the rate of Rs.2,490/- p.m. from the date of institution of the suit till the recovery of possession be held as per provisions under Order 20 Rule 12 Clause (c) of the Code of Civil Procedure. This order was challenged by the present appellants inspite of the fact that they obtained the decree for possession as well as mesne profits. The lower appellate court modified the order passed by the Trial Court and directed that the Trial Court order regarding mesne profits was set aside and it was directed that the tenant should pay rent of the suit property since termination of tenancy till handing over vacant possession to the landlord as damages and further directed that separate enquiry be held under Order 20 Rule 12(c) of the C.P.C.

In fact the appeal should not have been filed by the present appellants in the District Court in the first place and now they have challenged the modified order passed by the Addl. District Judge. Obviously, the order passed by the Trial Court was defective so far as the mesne profits were concerned because, while direction regarding enquiry of mesne profits was made,

it was also directed that the mesne profits at the rate of Rs.2,490/- p.m. should be calculated which cannot be legal order and, therefore, it has been modified by the lower appellate Court on the ground that even after termination of the tenancy, occupation of tenant is not authorised or wrongful but occupation of the tenant becomes unauthorised or wrongful after passing of decree of eviction. Considering this aspect, it was directed that the prayer for mesne profits of landlord cannot be considered from the date of termination of tenancy and the decree passed by the Trial Court therefore was required to be modified.

Under the circumstances, I do not find any defect in impugned order and, therefore, without further elaboration, the appeal is hereby dismissed with no order as to costs.

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